Supreme Court, U.S.
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No. 09-118

In The
SUPREME COURT OF THE UNITED STATES

LOUTO J. BRAQUET, JR., et al.,
Petitioner-Appellant-Petitioner,

v.

DOUGLAS H. SHULMAN, COMMISSIONER, INTERNAL REVENUE SERVICE, et al.,
Respondent-Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE § 451 GROUP SITTING IN
NEW ORLEANS, LOUISIANA, A/K/A
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

WITH APPENDIX A

LOUTO J. BRAQUET, JR.
c/o P.O. BOX 58154
HOUSTON, TX 77258

Questions Presented

Appellate court clerks—Decision-making authority

Scope of Clerk's Authority

1. Does an appellate court (deputy) clerk have decision-making authority, at all?

Compelled Consent

2. If so, then, in general, may the appellate court compel consent to repeatedly objected-to decision-making by the clerk?

3. Did doj ever lawfully obtain an extension of time to submit a brief?

4. May the appellate court compel Braquet to consent to repeatedly objected-to clerical decision-making granting Braquet's motion to reconstruct the Record?

Statutory Challenges

5. Does 28 U.S.C. § 711 violate Due Process or Separation of Powers?

6. Does 28 U.S.C. § 956 violate Due Process or Separation of Powers?

7. Does FED. R. APP. P. 27(b) violate Due Process or Separation of Powers?

8. Does 5TH CIR. R. 27 violate Due Process or Separation of Powers?

"Special Trial Judge" Participation

Statutory Challenges

9. Does TCR 182 violate Due Process?

10. Does TCR 183 violate Due Process?

11. Does irc § 7443A violate Due Process?

Compelled Consent

12. Did ARMEN ever have signature authority?

13. Did COLVIN and DI TROLIO violate Due Process by unilaterally and "secretly" "unfiling" Braquet's reasserted objection to STJs?

More Statutory Challenges

14. Does TCR 160 violate Due Process?

15. Does TCR 91 violate public policy?

16. Do TCRs 120 and 121 violate Due Process?

17. Do TCRs 70(a)(2) and 90(a) violate Due Process?

Parties and Capacities

18. Did COLVIN violate Due Process by unilaterally "ordering" the striking of parties and/or capacities?

19. Did COLVIN violate Due Process by unilaterally and "secretly" "ordering" the striking of parties and/or capacities?

"Lodging" and Due Process

20. At what point is a merely "LODGED" post-judgment motion considered denied by operation of law?

21. Are COLVIN's "LODGING" rulings just more "secret" orders, i.e., violations of Due Process?

Pleadings and TCR 51

22. Is COLVIN a "party" for purposes of TCR 51?

23. Is COLVIN's TCR 51 motion/"order" to replead/ amend vague?

Due Process and the TCRs

24. Is comm'r's effective summary judgment motion too early?

25. Should Braquet be awarded a default judgment?

26. Should one or more of Braquet's post-judgment motions have been granted?

27. Should Braquet be awarded a new trial?

Principal and Agent

28. Did KORB/SANZ ever prove up having signature authority?

Standing and Burden of Proof

29. Did comm'r ever prove its standing?

30. Did comm'r ever satisfy its threshold burden?

31. Does the Record contain any evidence justifying the "judgment"?

32. Did the "tax court" unlawfully shift the burden of proof?

Parties

Petitioner

LOUTO J. BRAQUET, Jr. and Louto J. Braquet, Jr.

Respondent

DOUGLAS H. SHULMAN, COMM'R, INTERNAL REVENUE SERVICE, and Douglas H. Shulman, Comm'r, Internal Revenue Service.

Relevant notes.

The "tax court" struck parties/capacities.

And, "the fifth" struck parties/capacities.

Here, Braquet includes comm'r's name, which was not previously included.

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Petition for a Writ of Certiorari

Braquet petitions for a writ of certiorari to the federal appellate court ("the fifth") as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date of "the fifth's" "judgment"
24 June 2009 [1] [+90: 22 Sep 2009].
No. 08-61046.

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding Rule 29.4(b)
Purported United States agency is a party. All activity in the "tax court" and the appellate "court".

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

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[1] Given the disparity in "mail in transit" times, Braquet notes that he received the 24 June "judgment" in hand on 29 June.

Statement of the Case

Tax Court Jurisdiction

None—no standing.

Comm'r never intended to prove standing.

Texas has a rich history

The Alamo.

Texans have been, are, and will remain eternally vigilant against tyranny.

Stephen F. Austin's father, Moses Austin, acquired an empresarial land grant in what was then Spanish Texas. "The Old 300" Anglo settlers were allowed to establish a colony in Texas. That first location is still recognized in Brazoria County. When Moses Austin died just a few years later, June, 1821, Stephen F. inherited the land grant.

Living in New Orleans at the time of his father's passing, Stephen F. and his party traveled to San Antonio to reconfirm the land grant. En route, they learned that Mexico had declared independence from Spain. While the local Texas governor originally reauthorized the empresarial grant, he later informed Austin that the new Mexican leadership had refused to recognize it. Austin traveled to Mexico City, and the colonization project was allowed.

In 1823, that emperor abdicated, and in 1825, the legislative body of the state of Coahuila y Tejas passed a law recognizing empresario grants. The group that acted as security for the developing colony is the origin of the Texas Rangers, an elite law-enforcement group recently "federalized".

Having been active with the Freemasons in Missouri prior to moving to New Orleans, Austin started up a Lodge. That developed well, so well that

the Mexican government, fearing an organized push for independence, outlawed Freemasonry in October, 1828. Austin then abandoned that effort.

By 1832, the original 300 had grown to more than 11,000. The Mexican government wanted to control immigration, and they became less hospitable toward the colony in Texas.

That motivated Austin to return to active political activity. Originally, he supported the now infamous Santa Anna. When Santa Anna won the presidency, the Texans sought benefits. Austin, thinking it premature, tried to moderate the requests, but he presented the requests formalized by the Conventions of 1832 and 1833. The immigration limitations were lifted, but statehood was not allowed. By 1833, they had only 30,000 inhabitants; they needed 80,000 to be recognized as a state.

Concurrently with those developments, a former American, Bradburn, became a Mexican military officer, and in October, 1830, was in charge of the post at Anahuac, Texas. A letter delivered to him in January, 1832, concerning 10 men started an obsession in him that everything about Texas was going to result in annexation of Texas by the United States, and he intended to prevent that. He made himself very unpopular with the Texans.

In June, 1832, Bradburn's soldiers attacked a Texas woman, and that started a chain of events that developed into the Texan's war for independence from Mexico. The Texans tarred and feathered a neighbor who refused to come to her aid, and then they demanded Bradburn turn his renegade soldiers over for similar punishment. Bradburn's refusal motivated the organization of a militia, which was illegal under Mexican law. The leader was arrested,

but after Bradburn received numerous personal threats, he released the Texas militia leader.

An issue over slaves added fuel to the fire of independence. Bradburn actively supported the Mexican law that forbade slavery. In 1831, when two slaves from Louisiana were allowed asylum in Mexico, the owner retained (young) lawyer William B. Travis to retrieve them. Bradburn, seeing conspiracy plots everywhere, arrested Travis without warrant, charges, or prospect of jury trial. The colonists were outraged, but Mexican law had not yet developed to the stage that recognized those fundamental rights. The armed skirmish(es) at Anahuac over that matter led to the signing of the Turtle Bayou Resolutions, in which the "federalist" Texans formally supported Santa Anna. In short, Bradburn's overreaction to the matter was the seed of the response that gave unstoppable momentum to the quest for independence. These skirmishes united the Texans, [2] and that common ground developed into the Convention of 1832.

Texans in Gonzalez had been given a canon. In 1835, Santa Anna wanted it back. By this time, he had also substantially established his dictatorship, disillusioning the formerly supportive Texans. Texans gathered at Gonzalez to oppose the 100 troops sent to disarm Gonzalez. When fired upon, the Mexican force withdrew. The Battle of Gonzalez marked the start of the war for Texas independence.

From Gonzalez, the troops organized and marched toward what is now San Antonio, then called Bexar. Austin was elected the commander-in-chief, but not long after the troops split under his

[2] Actually, Texians is more accurate.

command, and as morale waned in the winter months, Austin resigned.

That was during the Siege of Bexar, which was actually the first battle involving the Alamo Mission. As the Mexican forces retreated from the approaching Texas militia, they ultimately sought refuge for the wounded in the Alamo. The surrender by the Mexican forces in December, 1835, led to the end of the last organized Mexican garrison in Texas. The Texans thought that the war was over.

Santa Anna, having planned a military strategy for a year, upon hearing of his brother-in-law's defeat was committed to avenge his family's honor despite counsel to avoid a direct confrontation. Thus, Santa Anna moved his troops north. This is after having encouraged the Mexican legislature to allow the Mexican army to treat all foreigners (i.e., Americans) fighting in Texas as "pirates." This meant "no prisoners." To be a captured pirate was to be executed immediately.

It happened that the Texans were rather unorganized after the Mexican forces left, and the rumors of the approaching army were disregarded. So, the appearance of the Mexican army came very much as a surprise to them, but not to the inhabitants of Bexar.

Santa Anna arrived in San Antonio de Bexar on 23 February. And, the Mexican Siege began.

Of no real surprise, even the initial response to Santa Anna's appearance was disorganized. Santa Anna raised the "no quarters" flag, and Travis (the lawyer) responded with the canon shot. Bowie (the experienced soldier) sent an emissary to talk with Santa Anna. However, after learning that there'd be no prisoners, Bowie and Travis were of one accord,

and they agreed to fire the canon that second time.

The actual invasion started early on 6 March 1836. The Texans, between 180 and 250, in number, fought off the first two waves of attack, which started well before sunrise that morning. Some say 4:00; some, 5:30. The third wave started about fifteen minutes into the battle, and before sunrise, 6:30?, the battle was over. All Texan combatants were killed. In fact, the Mexican soldiers mutilated the corpses for quite some time afterwards, to make ***sure*** they were dead, even after the buglers sounded "retreat".

San Jacinto.

Santa Anna was sure that the Texans would flee. In reality, they swarmed to join up with Houston and his army. The vicious, mindless brutality coupled with superabundant abuse of power by the tyrant stimulated that level of response. The butchery of the disarmed men at Goliad only added fuel to that fire. The Texans resolved all the more to rid their land of the bloodthirsty tyrant Santa Anna.

Houston led the Texas troops eastward. On 19 April 1836, Santa Anna's forces caught up with the Texans at Lynch's Ferry. Santa Anna "knew" he had Houston cornered. So, he rested his troops, planning to attack on the 22nd. Highly overconfident of his situation, Santa Anna made no provisions for the downside, for he posted no sentries during the time of afternoon siesta on 21 April.

First, about 4:30 p.m., Houston burned the bridge, the sole escape route for either army, except to swim through water up to 10 feet deep.

Then, by silent approach, in broad daylight, the Texans took the entire Mexican army by complete surprise. The destruction of the Mexican army took

about 18 minutes, while the residual fighting lasted an hour or so. They encouraged each other shouting, "Remember the Alamo!" and "Remember Goliad!" as they demolished the tyrant's army.

Santa Anna escaped, but was captured the next day, being identified by being saluted and by still wearing his silk underwear. He was held as a prisoner of war, during which time he signed the Treaty of Velasco, which ended Mexican occupation of Texas, and met with President Jackson. He was returned to Mexico in disgrace in 1837.

April is remembered for Texas Independence.

Thus, Texans recognize April for several things, starting with termination of tyranny and institution of independence. During April, Texans do not make time for self-taxation to finance lawlessness and tyranny, but rather to remember the cost of Liberty.

Access to this Court.

By most accounts, the new method, i.e., access to this Court, for Texas and Texans to obliterate tyranny started in concept on 29 December 1845. The door being opened, and trial courts being established, Texans exercised and applied that access "immediately", the first cases being ruled on in the 1850 term. *See Oakey*; *Randon*; *Spear*; *Bennett*.

From the beginning, Texans have opted for the judicial solution over the political/economic solution from the instant that option was first available. This is still the case, even where the lower courts have literally declared war on the very law to which they've sworn at least two oaths: license and office.

Appellate court clerks--Decision-making authority

Braquet repeatedly objected to non-judicial decision-making.

Braquet distinguishes "judges" from all other decision-makers. Braquet objected at trial and on appeal to all non-judicial decision-making. Both the "tax court" and "the fifth" "bulldozed" his objections.

The clerks "bulldozed" the objection.

2009 Jan 26. "Bulldozing" Braquet's overt objection, a clerk "granted" Braquet's written, signed, "conferenced", served, and filed motion to reconstruct the criminally tampered-with trial "Record". Upon receipt of that "order", which misleadingly says, "The court ...", Braquet objected, *again*, as of 3 Feb., conditionally, having to allow for the possibility that the clerk was merely reporting judicial activity. By clerical "ruling" of 5 Feb., the clerks opted to "bulldoze" some more.

Then, the clerks *and doj* "bulldozed" the objection.

2009 Feb 9. "Bulldozing" Braquet's overt objection, the clerk also "granted" doj's non-written, non-signed, non-"conferenced", non-served, non-filed, *ex parte* administrative request (by phone?) for an extension of time to file doj's brief. There is no documentation—no motion ahead of time; [3] no follow up letter. Cover-up for untimeliness? [4] Moreover, this

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[3] **No consent**; hence, ***all*** *ex parte* requests via phone are opposed. So, where's the ***motion***? 5TH CIR. R. 31.4.3.1.

[4] Here's the math. Braquet's Brief served 13 Jan. Add 30. That's 12 Feb. Add 3. That's (15) 16 Feb. Subtract 7. That's 9 Feb. KETCHUM's motion for extension was due 9 Feb. While the clerk's "order" is dated 9 Feb., the clerk's envelope is postmarked 10 Feb. Late in the day? Maybe. So, where's the immediately drafted follow-up letter served on all parties? If it

extension exists despite the ***stated*** policy ***against*** willy-nilly extensions. [5]

Clerical defiance of Braquet's motions.

2009 Feb 27. It being very clear the clerks were not reporting judicial activity but rather were entering rulings, Braquet filed his motion to strike the clerical "order" of 9 Feb. and to strike (or disallow) doj's brief. As of 2 Mar., the clerks "ruled" on those motions, as well, conveniently "reading" the motion (singular) to strike (only; "disallow" never recognized) doj's brief as prematurely filed, doj having filed no brief yet.

Judicial "bulldozing", as usual.

2009 Mar 9. SMITH corruptly rewrote Braquet's motion to **strike**, ***objecting*** to non-judicial decision-making, into a motion to **reconsider**, suggesting ***consent*** to non-judicial decision-making. There is no order of "assignment", no order of "referral", no unanimous consent of Record. There is only unbridled judicial "bulldozing", i.e., conscious disregard for Braquet's overt objections.

Braquet's motions to strike statutes and rules.

2009 Apr 20. Raising the issues formally, Braquet filed motions to strike §§ 711 and 956, FRAP 27(b), and 5TH CIR. R. 27, which relief was denied.

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exists, it's the *second* confession that no motion exists.

[5] In contrast, SHEEHAN requested an extension in Collard v. comm'r, No. 09-60298 (pending), via signed, served, verified, filed motion. "Conference" was at least contemporaneous with the filing. This is night and day different from KETCHUM's approach. Extension isn't the issue. Defiance of the law is the issue. Compelled participation in forced alternation of the judicial system is the issue. Are they bound by their own stinkin' rules? ("Bulldozing" Collard's objection, the *clerks* "granted" SHEEHAN's motion.)

"Special Trial Judge" Participation

Braquet repeatedly objected to non-judicial decision-making.

"Bulldozing" Braquet's objection, COLVIN assigned ARMEN, referring the case to him as of 12 Sep. ARMEN entered the 29 Sep. "final" "ruling". Braquet objected to both in ¶ 1 of his petition.

Post-"assignment" (-"referral") objection "unfiled".

On 27 Sep., Braquet received in hand the 12 Sep. "referral" "order" served 16 Sep. On 29 Sep., Braquet submitted his Reasserted and Standing Objection to STJ participation. The clerk "unfiled" this objection saying the case was closed.

Statutory Challenges "LODGED".

Braquet's challenges to TCRs 182 and 183 and to irc § 7443A are post-"judgment". The "ruling" on each of those motions is "LODGED", whatever that is.

More Statutory Challenges

Compelled consent permeates the process.

The objected-to TCRs are rooted in a fundamental policy of compelled consent.

Parties and Capacities

COLVIN raised another "parties only" issue.

COLVIN has an addiction to striking parties/capacities by defacing the documents. He committed another such Record-tampering episode in this case, and, as usual, he struck *sua sponte* parties/capacities without motion by any party, opportunity to be heard, basis in fact, ***or*** basis in law. He just won't stop being a ***party*** in these cases.

There is no misjoinder issue, either.

All "orders" reflect this "secret"-"order"-based *sua sponte* striking of parties/capacities.

"Lodging" and Due Process

COLVIN "Lodged" Braquet's post-judgment motions. The TCRs don't mention "Lodging". The motions received no other "ruling". How "Lodging" affects the appellate time-table is uncertain. Vagueness consumes the practice.

Key, COLVIN never gave Notice of the "rulings" of "Lodged"; hence, more "secret" "orders".

Pleadings and TCR 51

In response to **"taxpayer" means "fiduciary"** petitions, COLVIN enters, *sua sponte*, a vague TCR 51 motion/"order" to amend the petition. TCR 51, by its very own terms, is for "parties only". But, COLVIN filed his motion/"order", anyway.

Comm'r has never requested amendment. Just COLVIN.

Since the petitioner is the *de facto* **defendant**, COLVIN's facially vague amendment "order" makes absolutely no sense procedurally. Thus, the clear "message" is this: "STOP DEMANDING THAT COMM'R PROVE UP A TRUST!" Thus, COLVIN's amendment "order" amounts to a compelled waiver of defenses. Braquet has declined to yield to COLVIN's corrupt coercion.

Due Process and the TCRs

§ 7458—Statutory confirmation of Due Process.

In irc § 7458, "taxpayer" must mean "petitioner". It can't possibly be that "taxpayers" *are* entitled to Due Process but non-"taxpayers" *are not*. So, Due Process applies, starting with Notice.

Comm'r's improperly conjoined motion*S*.

TCR 54 identifies the two motions that may be

conjoined. "Motions to dismiss" and "motions for sanctions" are not on that list. Still, comm'r *submits* the improperly conjoined motion**S**; the clerk *files* the improperly conjoined motion**S**; and someone, here the unconsented-to STJ, *grants* one or both of the improperly conjoined motion**S**. If the TCRs mattered, comm'r's improperly conjoined motion**S** would never be allowed filed.

Comm'r's summary judgment motion.

There's another reason those motion**S** can't even be filed. They're submitted too early!

Since the conjoined motion**S** look to matters outside the pleadings, TCRs 40 and 121 render the motion**S** a summary judgment motion. Also, a motion to dismiss ***is*** a summary judgment motion per irc § 7459(d). Why else is the Record (*evidence*) mentioned? Dismissal never reaches the merits!

Procedurally, summary judgment motions can't even be ***filed*** until 30 days after closure of pleadings, i.e., "joinder of issue". And, there can't be any closure or joinder without a responsive pleading. Comm'r filed no responsive pleading, as usual. Thus, there was no closure (no joinder); hence, the 30-day clock never started.

Comm'r's summary judgment motion being too early, it can't even be *filed*!

Comm'r's threshold motion for sanctions also punctuates comm'r's incessant and habitual bad faith refusal to stipulate.

Comm'r never responded.

Per the "tax court's" very own stinkin' rules, (A) comm'r's improperly conjoined motion**S** can't be filed; (B) comm'r's summary judgment motion can't be filed; and (C) comm'r's unsigned motion**S** can't be

filed. Therefore, per the "tax court's" very own stinkin' rules, comm'r never responded. Nonetheless, Braquet's motion to strike was denied, as was his motion for default judgment.

Principal and Agent

No evidence of agency.

He who claims agency must prove agency. Braquet has challenged KORB's/SANZ's signature authority. Thus, the Record should have *evidence* proving up the relevant principal/agent relationship. But, the Record is conspicuously silent on this point.

Thus, all comm'r's documents are unsigned.

Standing and Burden of Proof

No evidence of standing.

Comm'r is the *de facto* **plaintiff**. For the "tax court" to have jurisdiction to grant relief in comm'r's favor, comm'r has a duty to plead facts triggering the "court's" jurisdiction. To satisfy that duty, comm'r filed no pleading whatsoever.

No evidence of comm'r's threshold burden.

Comm'r, the *de facto* **plaintiff**, has proved up no commercial nexus. This Record contains **no evidence** (A) of any written agreement, (B) that Braquet, the *de facto* **defendant**, (1) is a fiduciary, (2) to any beneficiary, especially comm'r, ***or*** (3) of any trust *res*. Thus, from the outset, comm'r had no intention of even trying to prove a commercial nexus; hence, comm'r, the *de facto* **plaintiff**, never even intended to try to prove standing.

No evidence justifying the "judgment".

Comm'r filed no pleading. Comm'r submitted no evidence. The only evidence of Record is Braquet's, and none of it *supports* the "judgment".

Unlawful shifting of the burdens.

As usual, COLVIN & Co. have presumed the petitioner liable. Comm'r never even proved agency, much less an agreement. There being no evidence of any fiduciary duty due or owing by Braquet to comm'r, or to anyone else for that matter, the only way to hold Braquet liable is by relieving comm'r of his/its various evidentiary burdens.

Void Judgment

No standing?—no jurisdiction.

The "judgment" is void for lack of jurisdiction.

Argument

Appellate court clerks—Decision-making authority

Scope of Clerk's Authority

1. **Does an appellate court (deputy) clerk have decision-making authority, at all?**

Just compare the oaths of office.

Cf. § 453 *with* § 951. In the former, there's at least a reference to the archived document called the Constitution, as well as to the laws of the United States. In the latter, the oath is to obey the "judges". No appellate court clerk takes even a feigned oath to abide by the laws of the United States. Why not? Because the congress never intended for § 711 and § 956 clerks to be decision-makers!

But see FRAP 27(b).

Compare the duties contemplated.

If the clerks were to be decision-makers, then surely the congress not only would bind them by oath to the laws of the United States but also would spell out legislatively the scope of such authority. But, to compare §§ 631 and 636 with §§ 711 and 956 is to see a stark contrast. Clearly, magistrates *are* designed to be alternative decision-makers. Just as clearly, appellate court clerks *are not*.

By consent only.

The (deputy) clerks are not § 451 "judges". Thus, presuming a reason exists for the Rules that even *contemplate* clerical decision-making, if clerks have signature authority to enter rulings, at all, *see* FRAP 27(b), it would be "by consent only". *Cf. Gonzalez* ("If the parties consent ....").

Summary.

No matter what "the fifth" wants the clerks' "powers and duties" to include, the (deputy) clerks are not § 451 "judges". They have no subject matter jurisdiction. They are not members of the motions panel. At best, they are "alternative decision-makers" who acquire signature authority, if at all, only by unanimous consent of the parties.

Compelled Consent

2. **If so, then, in general, may the appellate court compel consent to repeatedly objected-to decision-making by the clerk?**

No. *Gonzalez* ("If the parties consent ....").

3. **Did doj ever lawfully obtain an extension of time to submit a brief?**

No motion *or* order!

Braquet never consented to non-judicial decision-making. *Gonzalez* ("If the parties consent ...."). Thus, it matters that there is no motion for extension, at all. Further, since there is no judicially subscribed order granting the non-existent motion, neither doj's brief nor its motion for sanctions were ever *lawfully* filed. Both should be struck.

4. **May the appellate court compel Braquet to consent to repeatedly objected-to clerical decision-making granting Braquet's motion to reconstruct the Record?**

No. *Gonzalez* ("If the parties consent ....").

Statutory Challenges

5. **Does 28 U.S.C. § 711 violate Due Process or Separation of Powers?**

It's the application, not the language.

There's nothing facially wrong with this language.

However, the language defines no decision-making authority whatsoever. *Cf.* §§ 631 to 639.

To say, then, that clerical decision-making authority derives from this provision is to create an office judicially that the congress did not create. That violates Due Process and Separation of Powers.

6. Does 28 U.S.C. § 956 violate Due Process or Separation of Powers?

The application and possibly the language.

"[P]owers and ... duties assigned to them by the court." § 956.

Where this is read in the context of purely administrative activity, there's nothing wrong, here.

However, even this language defines no decision-making authority.

Moreover, to say that the court may authorize the clerk to enter decisions, even procedural decisions, is to elevate the office beyond the contemplation of the congress. The oath of office, § 951, makes no mention of the laws of the United States, but only the court. Therefore, it's clear that the congress never intended clerks to make decisions, not even procedural ones. As a result, to construe this to "recognize" decision-making authority in the clerk is to violate Due Process and Separation of Powers.

7. Does FED. R. APP. P. 27(b) violate Due Process or Separation of Powers?

The application and the language.

Procedural rules do not create subject matter jurisdiction.

Since the congress did not contemplate clerks as decision-makers, there's a serious doubt that one holding that office has any greater authority than that contemplated legislatively. Further, even to say that the *parties* may enlarge the scope of the office is to suggest that the scope of the office ***may*** depend

upon the agreement of the parties, which defies the concept of legislatively created offices.

But, let's presume that there's no limit on the tasks that may be assigned to a clerk. "Go assist the troops in Iraq." "Go assist the off-shore drilling crew." "Go assist the candidate's election staff." How does ***this*** "alternative decision-making" "office" operate by compelled consent where no other such office in the entire system may? It doesn't.

It's impossible for Braquet to think that these perspectives are new to this issue. The rule exists, but Braquet strongly doubts that judicially promulgated procedural rules may expand the scope of a legislatively created office. Moreover, to construe this rule to empower the clerks with § 451 authority, even if limited to procedural matters, is to defy Due Process and Separation of Powers.

Even if this Rule stands, ***no*** clerk, even assigned, referred, ***and*** under oath to support the laws of the United States, has signature authority to enter a ruling without the consent of the parties. *Gonzalez* ("If the parties consent ...."). Otherwise, this rule surely defies Due Process and Separation of Powers.

8. Does 5TH CIR. R. 27 violate Due Process or Separation of Powers?

The application and the language.

This local rule makes several grants of decision-making authority to clerks. Not one bit of it comes within legislative contemplation of the office of clerk. Thus, this rule, as with FRAP 27(b), violates Due

Process and Separation of Powers.

Borrowing the thoughts from the preceding Question, the result is the same. If there ***is*** a way, by promulgation of a judicial rule, to enlarge the scope of an office created legislatively, turning it into a decision-making office that it wasn't created to be, there's still no way to compel a party to consent to decision-making by that alternative decision-maker. *Gonzalez*. To construe this otherwise is to defy Due Process and Separation of Powers.

"Special Trial Judge" Participation

Statutory Challenges

9. Does TCR 182 violate Due Process?

Magistrates and STJs are "the same".

The parallel between magistrates and STJs is direct. Key, the only way to an STJ is through "assignment" and "referral" by a "tax court" "judge". No "referral" can happen without consent shown of Record. *Gonzalez* ("If the parties ***consent*** ....").

Compelled consent.

TCR 182(d) is 100% dependent upon compelled consent. The rule purports to give the "chief judge" total control over the issue of STJ participation. But, that decision is not the "chief judge's" to make. *Gonzalez* ("If the ***parties*** consent ....").

What does "authorize" mean?

We can try to limit "authorize" to the concept of "assign". But that's not what the rule says. Characteristic of the entire set of TCRs, discretion

reserved in the "judge" or "chief judge" is astronomic. What the rule says is that the "chief judge" may alter the legislatively defined scope of the office. That's way beyond "assign". That's way beyond tortious interference with the agreement of the parties. That's restructuring the judicial system by "force", i.e., under color of law and office.

The *Ballard* problem remains!

Despite *Ballard* (TCR 183), TCR 182(c) purports still to allow "secret" "orders". *But see Ballard*; TCR 182(e), TCR 183(b). Per the rule, the report doesn't go to the Record. Instead, it goes to the "chief judge".

Judicial construction doesn't save the rule.

Reading TCR 182 in terms of *Gonzalez* doesn't solve the problem. Galactic discretion still exists in the "court" to alter judicially the scope of the office of STJ (Separation of Powers), the scope of participation (tortious interference, compelled consent), and the handling of the STJ's report (criminal Record-tampering).

10. Does TCR 183 violate Due Process?

"Assign" and "shall".

TCR 183(a). The "assigned" STJ "shall" conduct the trial. That's compelled consent, *Gonzalez*, and tortious interference, as well as potential criminal Record-tampering.

Where we read "assign" also to mean "refer", which is exactly how COLVIN intends it, and where "refer" is based on unanimous consent, then there's

no problem. But, where "assign" and "refer" both contemplate an act engaged unilaterally by the "chief judge", which is exactly how COLVIN intends it, we've got nothing but "bulldozing" the threshold objection, i.e., compelled consent, etc. *Gonzalez*.

No "assignment" or "referral" of Record, formerly.

TCR 182(b), (c), and (d). This is an area presently under change. As originally practiced, COLVIN's "assignment" "order" would never appear of Record. The STJ would just show up one day. That's the "secret" "order" cult problem raised below.

That bad habit is changing. "Assignment" "orders" are now appearing of Record.

Objections to "assignment" ("referral") "orders" have been "unfiled", as happened here, so there's a LONG way to go, which may involve jail for COLVIN & Co. But, there *is* tormentingly slow progress toward ending this "secret" "order" cult problem.

11. Does irc § 7443A violate Due Process?

The problem is in § 7443A(c).

The conceptual origin of the problems with TCRs 182(d) and 183(a) is § 7443A(c), which purports to put in the hands of the "chief judge" the authority to allow the STJ to make the decision of the court.

That's ***not*** the "chief judge's" call to make. If there's any STJ participation, at all, then the scope of that participation is governed by the consent of the parties. Period. *Gonzalez*. Since it's within the legislative scope of the office of STJ for the STJ to enter the decision of the court, the "chief judge's" interference on that issue is completely beyond the scope of his authority.

This one sounds more in tortious interference, compelled consent, and criminal Record-tampering than Separation of Powers.

Compelled Consent

12. Did ARMEN ever have signature authority?

No. *Gonzalez.*
Consent cannot be compelled. *See* Question 15.

13. Did COLVIN and DI TROLIO violate Due Process by unilaterally and "secretly" "unfiling" Braquet's reasserted objection to STJs?

An interesting timing issue.
COLVIN's "order" "assigning" (and "referring" the case to) ARMEN is dated 12 Sep. The Docket Sheet confirms service as of 16 Sep.

That envelope didn't arrive in hand until 27 Sep.
On 29 Sep., Braquet filed (mailed) his Standing Objection document.

So, even though the "C/S" date for the Standing Objection was the same as the "final" "judgment", the "court" "unfiled" the objection, citing "case closed".

The "secret" "order" cult strikes again!
Moreover, it's a "secret" "unfiling", because the "unfiling" "order" was not filed of Record. [6]

[6] Just to mention it, the "tax court" *has* started very recently

Is judicial "bulldozing" to be allowed?

Does the threshold assertion of non-consent matter? May a court "bulldoze" the objection by exercising the objected-to authority in defiance of the objection, thereby compelling the objecting party to object ***every time*** the issue comes up?

"Bulldozing" is just another form of compelled consent. If "bulldozing" ***is*** possible, then it ***is*** possible to waive the objection via silence in response to the "bulldozing". Thus, it matters that Braquet was not silent in response to the "court's" intent to exercise unconsented-to authority.

As a general rule, "unfiling" is offensive, even criminal. But, if "bulldozing" ***is*** possible, then "unfiling" a direct objection to STJ participation "filed" on the date of the exercise of the very power that doesn't exist without that consent, or within a commercially reasonable time period regardless of what else has or hasn't happened, is all the more offensive and all the more criminal.

Threshold objection should be sufficient.

Looking at the solution, where there's threshold *silence*, then objecting after-the-fact to clerical or STJ participation would seem necessary. Where there's threshold *silence*, coupled with no post-use objection, "consent" seems a fair conclusion (to that point). An objection, even at that point, should operate as a withdrawal of consent and as a standing objection.

Where there's a threshold *objection*, that should operate as a standing objection. The only reason it wouldn't be a standing objection is that "bulldozing" is permitted. The standing objection remains until

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to "file" their "unfiling" "orders", which reduces, at least, the number of crimes they commit via these "unfiling" episodes.

there's a formal assertion of consent of Record. That consent, if limited, would apply only to the stated extent (if all parties agree, etc.). [7]

More Statutory Challenges

14. Does TCR 160 violate Due Process?

Includes FRCP 50(a), but not 50(b).

One thing that's missing is the concept of appellate consideration of entry of a result directly contrary to that entered by the "tax court". *Cf. Cone*, 330 U.S. at 218; *Globe Liquor Co.*; *Johnson*, 344 U.S. 48. But, maybe it already exists. *Cf. Bruch* (*de novo* review of wanna-be beneficiary's claim; ERISA).

Suspension of laws of evidence?

Also, the system is unfair by design where the law of evidence applies conditionally on whether substantial rights are affected. Since "tax court" matters are "always" about trust property, substantial rights are "always" at issue. Key, how may laws of evidence be suspended where § 7459(d) **compels** examination of the Record (for *evidence*)?

Moreover, where evidence of the underlying trust agreement isn't compelled produced, then the system is tyrannical, compelling consent where it may.

If TCR 160 doesn't offend *Unitherm Food Systems*, that would be good to know.

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[7] There is a limited number of times a pull-tab on an aluminum can may be bent back and forth before it breaks. Thus, "on again, off again" has to be addressed, as well.

15. Does TCR 91 violate public policy?

TCR 91—The "tax court's" trademark compelled consent policy; "bulldozing" with a vengeance!

Coercion vitiates the very "evidence" it purports to create. *Rudzewicz*, 471 U.S. at 486 (jurisdiction doesn't flow from fraud, undue influence, or overwhelming bargaining power); *Ohralik* (undue influence in legal services environment, in particular); *Bates* (along the same line; focus on legal services ads). FRCP 8(c); *Ballard* (local rules don't justify (criminal) Due Process violations); 28 U.S.C. § 636(a), (c) (magistrate participation is "by consent only"); *Gonzaiez* ("If the parties consent ....") (construing § 636(b)); *Boddie* (denial of access); *Harbury* (same).

Setting a condition precedent for discovery is one thing. *See* TCR 51, 70(a)(1), 70(a)(2), 90, 91(a), and 100. It is *completely* another to compel a party to agree by way of *deemed stipulation! See* 1 PAGE §§ 5.7, 15.11 (coerced will is not evidence); BOGERT §§ 42 at 434, 44 at 452 and n.16 (coerced trust is not evidence); *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment); U.C.C. § 1-103 (coerced transaction is no transaction) *Planters' Bank* ("government" as proprietor); *Griswold* (STATE ***cannot*** compel commerce); Lev. 19:35-36 (honest system of weights and measures); *Gonzalez* (magistrate participation cannot be compelled); *Arnold* (vacated per *Booker*) (tax case; (A) never-before-seen charges, and (B) "evidence" not presented at trial and not agreed to, are inadmissible for sentencing); *Escobedo* (coerced confession is not evidence); *Miranda* (same).

TCR 91 goes ***way*** beyond setting a threshold condition to discovery. TCR 91(a) purports to require/compel ***stipulations***. A stipulation, while agreed, is hardly neutral. It will work against one party or the other. Thus, a *stipulation* is (A) an "admission by party opponent", R. 801(d)(2), for which each and every enumerated item in this rule of evidence necessarily carries an implied character of *voluntary*, or of *self-initiated*, (B) a "statement against interest", R. 804(b)(3), if the presumption of unavailability is satisfied, which statement is admissible *only* where the specifically stated term of *trustworthiness* is satisfied, or (C) a statement that otherwise qualifies as trustworthy so as to qualify as an exception to hearsay, per R. 807.

TCR 91(f) purports to allow the "tax court" to compel a party to *stipulate,* i.e., to *agree*, to facts to be used as *admission* evidence. *See* TCR 143 (FED. R. EVID. apply); FED. R. EVID. 801(d)(2) (admissions). Where a party refuses to agree, the "tax court" may deem the matter *stipulated*, i.e., *agreed*. That creates "evidence" via judicial compulsion. TCR 91(c).

Pick a context. Involuntary action does not produce *trustworthy* evidence. Coercion vitiates *any* stipulation. TCR 91 defies public policy.

16. Do TCRs 120 and 121 violate Due Process?

Comm'r controls petitioner's access to the court.

Because certain motions can't even be ***filed*** until there's closure of pleadings, or "joinder of issue", comm'r controls petitioner's access to the court.

TCR 121 reserves so much discretion in the "tax court" as to amount to effective denial of access.

TCR 120 allows the "tax court" to refuse to rule in petitioner's favor on the pleadings, thereby allowing the "tax court" to drag a party through the entirety of trial for no legitimate reason at all.

17. Do TCRs 70(a)(2) and 90(a) violate Due Process?

Systemic discovery-avoidance policy.

The federal rules are designed with discovery in mind. The TCRs are designed with both discovery-avoidance and compelled consent in mind.

TCRs 70(a)(2) and 90(a) support the TCR 91 policy of compelled consent. These so limit the discovery start- and stop-times as to amount to a denial of discovery policy, generally.

They also look to "joinder", which means that comm'r controls petitioner's discovery, as well.

Parties and Capacities

18. Did COLVIN violate Due Process by unilaterally "ordering" the striking of parties and/or capacities?

Striking of parties is a "parties only" issue.

Upon request of a ***party***, FRCP 9(a), a court may strike parties and capacities as the circumstances

may warrant.

COLVIN isn't doing the teaching, here!

COLVIN clearly thinks he's the ***teacher***, here. He's the **student**, and he's rebellious.

The most obvious fact is that ***no party*** requested any striking of parties of capacities. COLVIN did that of his own "motion", one more time.

Joinder is a judicial issue.

Now, per FRCPs 19, 20, and 21, the court has a variety of options when dealing with ***joinder***. But, there is no joinder issue here.

Presume there were. That ruling has to explain why it's "just" to take the action taken. In other words, ***something*** in the way of an explanation ***has*** to appear of Record. But, no explanation of Record appears, here. Some official documents are defaced, and all "orders" falsely alter the case style.

19. Did COLVIN violate Due Process by unilaterally and "secretly" "ordering" the striking of parties and/or capacities?

More "secret" "order" cultism.

See Question 18. Not only did COLVIN unilaterally strike parties/capacities on his own motion, and without any explanation whatsoever, but also he did so without "order" of Record. The early "orders" show falsely altered case styles, and then we get to the S-11-memorial defacing episode. [8]

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[8] Braquet notes Docket Sheet item [3]. COLVIN continues to file his *sua sponte* "non-orders" falsifying the case styles. There's still no motion by a party, opportunity to be heard, basis in fact, or basis in law, to strike any parties/capacities. But, his

"Lodging" and Due Process

20. At what point is a merely "LODGED" post-judgment motion considered denied by operation of law?

Does "LODGED" mean "denied"?

If "LODGED" means "denied", then it's denied when stamped. If "LODGED" has some other meaning, especially if it affects the appellate time-table, that would be valuable information to have.

21. Are COLVIN's "LODGING" rulings just more "secret" orders, i.e., violations of Due Process?

These "rulings" were never served.

See the Docket Sheet. COLVIN clearly intended to keep Braquet in the dark. To miss a deadline?

Pleadings and TCR 51

22. Is COLVIN a "party" for purposes of TCR 51?

The rule is self-limited to "parties only".

COLVIN is the only one talking about amendment. One more time, comm'r didn't raise that issue.

So, may COLVIN raise a "parties only" issue? Doesn't COLVIN trigger § 455(a) by doing so?

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criminal *defacing* episodes seem to have stopped.

Instead, the documents that don't yield to the illegal, judicial coercion to drop parties/capacities are simply "unfiled".

23. Is COLVIN's TCR 51 motion/"order" to replead/amend vague?

Amend what?

COLVIN makes no discernable objection, at all.

The petitioner is the *de facto* **defendant**. Braquet has defended himself against all anticipated claims, which claims never materialized. That sounds like a rock solid defense that needs no amendment.

Twombly, Iqbal.

Moreover, in light of the recent studies of minimum pleading requirements, namely *Twombly* and *Iqbal*, given that comm'r has filed no pleading at all, it follows that COLVIN's TCR 51 participation as a party is all the more pathetically pointless. Given the overtly criminal nature of this activity, it's also cataclysmically tragic.

Due Process and the TCRs

24. Is comm'r's effective summary judgment motion too early?

30 days after closure.

TCR 121. Closure (joinder of issue) can't happen without a pleading. So, that clock never started.

This is a summary judgment motion by either of two paths. The improperly conjoined motion*S* raise matters beyond the pleadings. That triggers TCR 121. *See* TCR 40(b). Also, even § 7459(d) overtly considers a motion to dismiss as a summary judgment motion. Why else would the Record (i.e., *evidence*) even be mentioned, since a dismissal renders reaching the merits impossible?!

Bottom line, per the "tax court's" very own stinkin' rules, that motion can't even be ***filed*** in response to a petition, ***any*** petition.

25. Should Braquet be awarded a default judgment?

Comm'r never appeared, as a matter of law.

See Question 24. Per the "tax court's" very own stinkin' rules, comm'r never responded. Per the "tax court's" very own stinkin' rules, comm'r's improperly conjoined motion***S*** can't be filed. Per the "tax court's" very own stinkin' rules, comm'r's summary judgment motion is too early, so early that it can't even be filed.

Thus, as a matter of law, per the "tax court's" very own stinkin' rules, comm'r never responded. It follows directly and instantly that Braquet is entitled to a default judgment.

26. Should one or more of Braquet's post-judgment motions have been granted?

There are several.

THE "JUDGMENT" SHOULD BE VACATED.

The STJ never had signature authority. Comm'r never proved standing, so the "tax court" never had subject matter jurisdiction. There is no evidence in support of the "judgment". Due Process violations aren't just legion; they're also criminal.

THE STJ'S "ORDERS" SHOULD BE STRUCK.

See Question 12. It's not the fact that he's totally wrong. It's the fact that he never had signature

authority. "Bulldozing" Braquet's objection leads to criminal activity, starting with Record-tampering.

TCRs 182 AND 183, AND IRC § 7443A SHOULD BE STRUCK.

See Questions 9, 10, and 11.

SANCTIONS.

They've drawn first blood on this. Since the sanctions rightfully go the other way, now would be a very good time to document that fact.

RECONSIDERATION AND SETTING ASIDE DISMISSAL.

This might be mooted out by some of the other relief requested. This offered them one last chance to grace the floor of the law library with a shadow.

27. Should Braquet be awarded a new trial?

This, too, is likely to be mooted out. This, too, offered them one last chance to visit the law library.

Principal and Agent

28. Did KORB/SANZ ever prove up having signature authority?

No evidence.

The Record includes absolutely no evidence proving up any principal/agent relationship.

The relevant agency theories.

ACTUAL AUTHORITY AND APPARENT AUTHORITY.

Agency cannot be presumed; the purported agent

must prove his agency. *See Schultz*, 956 S.W.2d at 760; *Zuniga* (citing *Bernsen*, 52 S.W.3d at 309); *Alamo Cmty. Coll. Dist.* (citing *S. County Mut. Ins. Co.*, 750 S.W.2d at 172)); *Disney Enters., Inc.*, 981 S.W.2d at 30; *Gray* (agency is not presumed; wife cannot be presumed to be husband's agent).

"[O]nly an alleged principal's words or conduct that are represented to the third party can clothe an alleged agent with apparent authority. [*BML Stage Lighting, Inc.*, 14 S.W.3d at 401]." *Coleman*, 180 S.W.3d at 588. In short, the alleged agent's word, alone, never proves agency.

Braquet challenged KORB's/SANZ's agency authority. Over this objection, agency has been presumed into existence, thereby shifting the burden. Thus, Braquet challenges the concept that where there is no specific finding of fact, the presumption favors the implied finding, thereby turning the matter into a sufficiency of evidence matter when on review. *Cf. Coleman*. The implied finding here favors agency, which is an issue of fact, which finding is made without any evidence, much less without any burden on KORB/SANZ. Thus, while this is *also* a *sufficiency* point, first it is a *burden shifting* point.

KORB/SANZ HAVE NO ACTUAL AUTHORITY.

Actual authority arises where the principal authorizes the agent. *See Cameron County Sav. Assn*, 819 S.W.2d at 603. Since there is no evidence, neither KORB nor SANZ has TCR 23(a)(3) signature authority, as Braquet has asserted.

KORB/SANZ HAVE NO APPARENT AUTHORITY.

There is no principal. So, there is all the more no communications by such non-existent principal with

Braquet about anything about any agent. Again, the Record is absolutely silent when it comes to evidence regarding such communications. Since KORB/SANZ are asserting agency, KORB/SANZ have the burden to prove agency. *See Schulz*, etc., *supra*. To presume agency is to shift the burden. *Cf. Coleman*.

KORB/SANZ have no signature authority.

Since KORB/SANZ have proved no agency authority, KORB/SANZ have no TCR 23(a)(3) signature authority.

Comm'r has no motion*S*.

See Questions 24 and 25. In addition to the facts that the motion*S* are improperly conjoined and too early, they are also unsigned. Thus, for yet one *more* reason, they can't be filed.

Standing and Burden of Proof

29. Did comm'r ever prove its standing?

30. Did comm'r ever satisfy its threshold burden?

No evidence.

These two Questions look to the same (lack of) evidence.

The only evidence of Record is Braquet's. That evidence *disproves* both comm'r's standing *and* his/its threshold burden. *O'Connor* (uncontroverted Affidavit accepted as true).

Bank of the United States (due diligence required of party asserting claim against endorser, not maker, as to place of presentment); *Roselius* (evidence of

perfect land title insufficient to support federal jurisdiction); *Jones Nat'l Bank* (is there substantial evidence to support the charge?); *Sinclair*, 279 U.S. at 761 (no material evidence to support charge); *Alexander* (no evidence supporting two of the claims); *Swift & Co.* (insufficiency of statute and indictment were not issues directly appealable to Supreme Court); *Bozza* (of the five counts, four were based on insufficient evidence); *Pittsburgh Steamship Co.* (federal appellate court's "finding" of trial examiner's bias was not supported by the Record); Thompson, 362 U.S. at 207 nn.12, 13 ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner* (Record so devoid of evidence as to render conviction a violation of Due Process); *Barr* (peaceful "sit-in" is not evidence of breach of peace); *Johnson*, 391 U.S. at 598 (no evidence supporting an element of the charge); *Vachon*, 414 U.S. at 480 ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process."); *Burks* (reversal based on insufficiency of evidence activates Double Jeopardy); *Haley* ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

THE THRESHOLD BURDEN IS COMM'R'S.

Obviously, Braquet has never conceded it. TCR 34(b)(4) (petitioner burdened to raise ***all*** issues, including those for which ***comm'r*** has burden). BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."); BOGERT § 871 at 156 and nn.2, 3 (beneficiary must plead and

prove the existence of the fiduciary duty).

Mitchell II, 463 U.S. at 225 (citing RESTATEMENT (SECOND) TRUSTS § 2 cmt. h) (elements of a trust). [9]

Comm'r has never even established being a real party in interest, Rule 17, much less proved up any writing establishing any fiduciary obligation on Braquet's part, TEX. PROP. CODE § 112.004, any beneficiary, or any trust *res*. *See* SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS, §§ 66, 74, 112.

COMM'R MUST ALSO PROVE STANDING.
Defenders of Wildlife ("injury in fact").

No injury, no claim, and no standing.

Where a petitioner, i.e., the *de facto* **defendant**, demands proof of comm'r's threshold burden, it's clinically nuts for comm'r to respond with a "motion to dismiss for failure to state a claim". Defendants don't assert claims; they assert defenses. Moreover, nothing about "dismissing" a "defense" satisfies comm'r's evidentiary burdens.

31. Does the Record contain any evidence justifying the "judgment"?

The only evidence of Record is Braquet's.

Braquet's evidence *disproves* **everything** on which the "judgment" purports to depend. *O'Connor* (uncontroverted Affidavit accepted as true).

Cf. irc § 7459(d) (judgment must look to evidence in Record) (***two*** sentences, here; the condition

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[9] This ***strongly*** suggests larceny, thus a *constructive* trust ("relationship ***necessarily*** arises;" "property ***belonging to*** the Indians"). May all Americans benefit from the lesson.

precedent for the first sentence fails; the second sentence requires evidence of Record). *See also* TCRs 13(a), 30, 34, 36, 37; FRCP 13(a), (f), 15(b), 17.

If comm'r *has* provided evidence, it's of disclaimer.

Comm'r's improperly conjoined motion*S* judicially admit comm'r's intent to intimidate Braquet out of testifying to and documenting his defenses, among other crimes. Thus, if there ever were any fiduciary obligation on Braquet's part, comm'r overtly disclaimed.

See BOGERT §§ 170-72 (disclaimer and its effect), in particular BOGERT § 170, at 205 (Proof of Acceptance or Disclaimer) (acceptance is presumed; disclaimer/renunciation must be supported by clear evidence). Criminal retaliation, witness-tampering, RICO-level extortion, mail fraud, and etc., all under color, is more than sufficiently clear evidence. Where it's sanctionable to demand proof of the trust, then it must be astronomically clear that there is ***no trust!*** *See also* BOGERT § 170, at 207 (purported beneficiary's conduct may amount to disclaimer). Since a beneficiary is such from the trust's creation date, disclaimer operates *nunc pro tunc* to that same date. BOGERT § 172, at 227-28. *See also* BOGERT § 50 at 108 (where purported beneficiary mistreats alleged settlor, trust is unlikely).

Disclaimer doesn't justify the "judgment," either.

Comm'r's silence doesn't satisfy its duty under The Patriot Act, either.

32. Did the "tax court" unlawfully shift the burden of proof?

Recent cases that overrule tyranny, ***again.***
Hamdan; *Boumediene*; *Munaf*; *Medellin*; *Heller*.

The threshold burden—no trust.
See Questions 29 and 30. Comm'r was relieved of his/its burden.

The pleading burden—no Notice.
See Question 23. *Twombly*, *Iqbal*. Where comm'r files no pleading, it's impossible for comm'r to be anything but relieved of this burden. Where's even Notice of the purported claim? Where there is no Notice, the judgment is void. *See Harris*, 55 U.S. at 339. *See also Milliken* (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice). *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Hamdi*; *Internat'l Shoe*; *Mullane*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

The motion to dismiss burden—Defendants don't normally assert claims!
Madigan (Part III); *Twombly*. ARMEN reversed this burden.

The summary judgment burden—no standing, no pleadings, no evidence.
Beard (citing *Anderson*, 477 U.S. at 255); *Scott* (citing *Diebold*, 369 U.S. at 655). Comm'r was relieved of his/its burden.

Burden shifting violates Due Process.

Pollock I, 157 U.S. at 553-54 (1st ¶ of opinion) ("United States" never proved itself a beneficiary; hence, the "16th Amendment" became the cover story for 31 U.S.C. § 321(d), but we still don't know who's who, or if any agreement exists; strict proof is demanded, ***especially*** in light of The Patriot Act—the proceeds go ***where?!***); *Clark* (burden and mens rea in insanity defense context) (citing (1) *Mullaney* (burden to prove mens rea on STATE not defendant), (2) *In re Winship* (to relieve the evidentiary burden is to violate Due Process), (3) *Sandstrom*, 442 U.S. at 524 (presumption of mens rea violates Due Process), (4) *Cool*, 409 U.S. at 103 (where defendant has to prove anything beyond a reasonable doubt, the burden has been shifted), and (5) *Martin v. Ohio*, 480 U.S. at 233-34 (self-defense evidence not limited to defendant's case-in-chief)); *Heiner*.

Irrebuttable presumptions violate Due Process.

Elkins; *Salfi* (in particular part III, which distinguishes *Salfi*); *LaFleur*; *Vlandis*; *Stanley*.

As manifestly encouraged by "the fifth", the "tax court" habitually and unlawfully shift the burden.

Remedies and Relief Requested

Given the foregoing, Braquet requests that this Court:

1. Grant this petition, issue the writ of certiorari, and take jurisdiction;
2. Go beyond "Vacated" and address all the Questions necessary and possible to address;

3. Strike all clerical rulings from the (appellate) Record, for lack of signature authority;
4. Consider the Record reconstructed per Braquet's motion on appeal;
5. Strike doj's brief and doj's motion for sanctions from the Record, for procedural non-compliance, including tardiness;
6. Declare FED. R. APP. P. 27(b) and 5TH CIR. R. 27, as applied by "the fifth", void for violation of Separation of Powers and Due Process;
7. Declare TCR 182 void for its defiance of *Ballard*, Due Process, and Separation of Powers;
8. Declare TCR 183 void, again, for its continuing violation of Due Process and Separation of Powers;
9. Declare IRC § 7443A void for its defiance of Due Process;
10. Strike all documents submitted by ARMEN for lack of signature authority;
11. Declare "bulldozing", i.e., conscious disregard of an objection to non-judicial decision-making made of Record, to be a violation of Due Process;
12. If "bulldozing" is permitted, specifically declare Braquet's Reasserted and Standing Objection to STJ participation part of the Record; *cf.* 4.;
13. Declare TCR 160 void for violation of Due Process;
14. Declare TCR 91 heinously void for violation of, even defiance of, public policy;

15. Declare TCRs 120 and 121 void for violation of Due Process;

16. Declare TCR 70(a)(2) and 90(a) void for violation of Due Process;

17. Declare the non-service of the ruling of "LODGED" to be a violation of Due Process;

18. Declare "LODGED" motions to be "pending" (indefinitely or time-limited), and if not ruled on prior to the Notice of Appeal, "denied" prior to and on the day of the filing of the Notice of Appeal;

19. Declare COLVIN disqualified from this case due to his unauthorized participation as a party;

20. Declare COLVIN's acts of striking parties/capacities to be violations of Due Process;

21. Strike COLVIN's TCR 51 motion/"order" from the Record for lack of signature authority;

22. If COLVIN's TCR 51 motion/"order" remains, declare it void for vagueness;

23. Strike comm'r's improperly conjoined motion<u>S</u> for violation of TCR 54;

24. Strike comm'r's motion to dismiss for violation of TCR 121 (too early);

25. Strike comm'r's motion to dismiss for lack of signature authority;

26. Overrule *Stearman*;

27. Overrule *Tello*; and

28. Remand to the "tax court" with instructions (A) to enter a default judgment for Braquet that comm'r take nothing and (B) that COLVIN and ARMEN shall not participate;

29. If by this stage there's still a need to address these, that this Court

A. Declare that comm'r never satisfied its threshold burden;

B. Declare that comm'r never proved standing;

C. Declare that the Record contains no evidence in support of the "judgment"; and

D. Declare that the "tax court" unlawfully shifted the burden of proof.

In addition, Braquet requests

30. The opportunity to brief any additional issues the Court may identify;

31. The non-argument calendar;

32. Costs;

33. All applicable sanctions against comm'r, doj, United States, and the courts below; and

34. Any and all relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Louto J. Braquet, Jr.
Louto J. Braquet, Jr.
c/o P.O. Box 58154
Houston, TX 77258

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Appendix A

Rule 14.1(i)(i)—Appellate ruling

2009 Jun 24—Opinion

United States Court of Appeals
Fifth Circuit
FILED
June 24, 2009

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-61046
Summary Calendar

LOUTO J BRAQUET JR,
Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent – Appellee

Appeal from the United States Tax Court
No. 13071-08

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges. [1] PER CURIAM: *

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[1] [N.B. *Cf.* No. 08-1271. *LJB*]

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except

Appellant Louto J. Braquet, Jr. purports to raise twenty-four issues for our review, including challenges to nine Tax Court rules, the authority of the Tax Court's chief judge to appoint special trial judges under 26 U.S.C. § 7443A, the resulting authority of the special trial judge, various clerical and administrative actions regarding his petition in Tax Court, and, finally, the Tax Court's dismissal of his petition disputing the Commissioner's notice of deficiency.

Braquet's numerous objections to Tax Court procedures are frivolous, and [⊥ 2] provide no basis for relief. His challenge to the notice of deficiency, dismissed by the Tax Court, is premised upon long-discredited theories of law and " 'shopworn arguments characteristic of tax-protestor rhetoric that [have] been universally rejected by this and other courts.' " *Stearman v Comm'r*, 436 F.3d 533, 537 (5th Cir. 2006) (citation omitted). "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain v. Comm'r*, 737 F.2d 1417. 1417 (5th Cir. 1984). They manifestly do not. Accordingly. we affirm the Tax Court's order dismissing Braquet's petition.

We also deny Braquet's "Motion to Strike 28 U.S.C. § 711 and 956, FED. R. APP. P. 27(b), and 5th CIR. R. 27," which attempts to challenge this Court's administrative handling of his appeal. Braquet alleges no prejudice from the orders issued in this case, and raises no basis for relief, so his motion is denied.

---

under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Finally, we consider the Commissioner's motion for sanctions pursuant to 28 U.S.C. § 1912 and Rule 38 of the Federal Rules of Appellate Procedure. In his appeal and subsequent motion to strike, Braquet concedes that his theory of income tax avoidance has been repeatedly and completely rejected by this Court. *See, e.g., Stearman*, 436 F.3d at 537-38; *Tello v. Comm'r*, 410 F.3d 743, 744 (5th Cir. 2005). His remaining arguments, laced with invective directed at appellees, the Tax Court, and this Court, reflect a general contempt and defiance of the Court's authority and include a number of baseless accusations of criminal conduct. To countenance this abusive conduct and frivolous legal posture would be to invite Braquet and future litigants to repeat it. We have observed that "[w]asteful and dilatory appeals unjustifiably consume the limited resources of the judicial system: 'While judges, staff and support personnel have expended energy to dispose of this meritless appeal, justice has been delayed for truly deserving litigants.' " *Stearman*, 436 F.3d at 540 (quoting *Foret v. S. Farm Bureau Life Ins. Co.*, 918 F.2d 534, 539 (5th Cir. 1990)). We agree with the [⊥ 3] Commissioner that a lump-sum sanction of $8,000, in lieu of calculating the costs and attorney's fees it incurred in responding to Braquet's appeal, is appropriate.

We AFFIRM the Tax Court's order dismissing Braquet's petition, DENY his motion to strike, and GRANT the Commissioner's motion for sanctions in the amount of $8,000 for persisting in this frivolous appeal.

2009 Jun 24—Clerk's cover letter

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
CHARLES R. FULBRUGE III
CLERK
TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130
www.ca5.us.courts.gov

June 24, 2009

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 08-61046, Braquet v. CIR
USDC No. 13071-08

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH CIR. RULES 35, 39, and 41 govern costs, rehearings, and mandates. **5TH CIR. RULES 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order**. Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing maybe appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court [sic], you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

The judgment entered provides that defendant-appellant pay to plaintiff-appellee the costs on appeal. [⊥ 2]

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Jamei Richey*
Jamei R. Cheramie, Deputy Clerk
504-310-7651

Enclosure(s)
Mr. Louto J Braquet Jr.
Mr. Thomas J Clark
Mr. Robert R. Di Trolio
Mr. Nathan J Hochman
Ms. Sara Ann Ketchum
Ms. Clarissa C. Potter

Rule 14.1(i)(ii)—Additional Orders

"Final" "judgment" in the "tax court"

2008 Sep 29—"Dismissal *and* Decision" (by STJ)

UNITED STATES TAX COURT
Washington, D.C. 20217

LOUTO J. BRAQUET, JR., Petitioner,	)	
v.	)	Docket No. 13071-08
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER OF DISMISSAL AND DECISION

This case is now before the Court on respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed July 16, 2008. Pursuant to our Order dated July 24, 2008, directing petitioner to file a written response to respondent's motion and offering petitioner the opportunity of filing a proper amended petition, petitioner filed a Response on August 22, 2008, and a Declination To Amend, also on August 22, 2008. [1]

Petitioner purportedly seeks review of respondent's notice of deficiency dated March 7, 2008, in which respondent determined a deficiency in petitioner's Federal income tax for 2004, together with additions to tax for failure to file and for failure to pay estimated tax. The deficiency is based on respondent's determination that petitioner failed to

[1] Petitioner also filed on August 22, 2008, eight frivolous motions, all of which were summarily denied by the Court.

report on an income tax return for 2004 various items of income, including compensation of $97,000 and unemployment compensation of $3,360.

Giving due regard to the statements contained in respondent's motion, which statements are incorporated into this order as the findings and analysis of the Court made in support of the ruling embodied herein, giving petitioner not only the benefit of every doubt as we are required to do at this stage of the proceeding, see Hicks v. Small, 69 F.3d 967, 969 (9th Cir. 1995), but wide pleading latitude as a pro se litigant, see Estelle v. Gamble, 429 U.S. 97, 106 (1976), we find that the [⊥ 2] petition filed in this case fails to raise any justiciable issue. Rule 40, Tax Court Rules of Practice and Procedure; see Parker v. Commissioner, 117 F.3d 785, 787 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed July 16, 2008, is granted, and this case is dismissed on the stated ground. It is further

ORDERED and DECIDED that there is a deficiency in, and additions to, petitioner's Federal income tax as follows:

		Additions to tax, I.R.C.	
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6654
2004	$21,425.00	$5,356.25	$613.99

(Signed) Robert N. Armen, Jr.
Robert N. Armen, Jr.
Special Trial Judge

Entered: **SEP 2 9 2008**

Additional "orders" in "the fifth"

2009 Jan 26—First Unconsented-to clerical "ruling"

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 26, 2009 [1]

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 08-61046 Braquet v. CIR
USDC No. 13071-08

The court has granted the appellant's motion to supplement the record on appeal in this case with "Braquet's reasserted and standing objection to participation by any special trial judge and the related unfiling order".

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Misty Fontenot*
Misty Fontenot, Deputy Clerk
504-310-7716

Mr Louto J Braquet Jr
Ms Sara Ann Ketchum

MOT-2

---

[1] [N.B. Received in hand 2 Feb 2009. *LJB*]

2009 Feb 5—Second Unconsented-to clerical "ruling"

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 5, 2009

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-61046 Braquet v. CIR
USDC No. 13071-08

We received your document titled "Braquet's Conditional Objection to the Ruling of 26 January 2009". In light of 5th Circuit Rule 27.1.11, we are taking no action on this document.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Peter Conners*
Peter Conners, Deputy Clerk
504-310-7685

cc: Ms Sara Ann Ketchum
BR-9

2009 Feb 9—Third Unconsented-to clerical "ruling"

United States Court of Appeals [2]
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 9, 2009

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 08-61046 Braquet v. CIR
USDC No. 13071-08

The court has granted appellee's motion for an extension of time to and including March 10, 2009, for filing appellee's brief in this case.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Misty Fontenot*
Misty Fontenot, Deputy Clerk
504-310-7716

Mr Louto J Braquet Jr
Ms Sara Ann Ketchum

MOT-2

---

[2] [N.B. Unusual offset in original. *LJB*]

2009 Mar 2—Fourth Unconsented-to clerical "ruling"

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130
www.ca5.us.courts.gov

March 02, 2009 [3]

Mr Louto J Braquet Jr
c/o
11630 Sagecanyon Drive
Houston, TX 77089

No. 08-61046 Braquet v. CIR
USDC No. 13071-08

We received your motion for to strike appellee's brief. We are taking no action on this motion. We cannot strike a document that has not been filed. You may re-file this motion when the appellee's brief is filed.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Peter Conners*
Peter Conners, Deputy Clerk
504-310-7685

cc:
Ms. Sara Ann Ketchum
Form Name: Documents Received – BR-9

---

[3] [N.B. The coversheet for this one is "Received" stamped as of 10 March 2009. *LJB*]

2009 Mar 9—Cover letter to a judicially subscribed "ruling"

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
CHARLES R. FULBRUGE III
CLERK
TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130
www.ca5.us.courts.gov

March 9, 2009

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 08-61046 Braquet v. CIR
USDC No. 13071-08

Enclosed is an order entered in this case.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

By: */s/ Misty Fontenot*
Misty Fontenot, Deputy Clerk
504-310-7716

Mr. Louto J Braquet Jr.
Ms. Sara Ann Ketchum

Form Name: Motion Notice – MOT2

2009 Mar 9—Judicially subscribed "ruling"

United States Court of Appeals
Fifth Circuit
FILED
March 9, 2009

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-61046

LOUTO J. BRAQUET, JR.,
Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from
the United States Tax Court

O R D E R:

IT IS ORDERED that appellant's motion to strike the ruling of February 9, 2009, treated as a motion for reconsideration of the Clerk's February 9, 2009, order granting appellee's motion to extend time to file appellee's brief, is DENIED.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge

2009 Jun 1—Cover letter to another judicially subscribed "ruling"

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

June 01, 2009

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 08-61046 Braquet v. CIR
Tax Court No. 13071-08

Enclosed is an order entered in this case.

CHARLES R. FULBRUGE III, Clerk

By: */s/ Peter Conners*
Peter A. Conners, Deputy Clerk
504-310-7685

Mr. Louto J Braquet Jr.
Ms. Sara Ann Ketchum

Motion Notice – MOT2 (lnpman)

2009 Jun 1—Another judicially subscribed "ruling"

U.S. COURT OF APPEALS
F I L E D
JUN 1 2009
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-61046

LOUTO J BRAQUET, JR.,
Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the
Tax Court, Internal Revenue Service

Before Judges JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the appellee's motion for sanctions against Louto Braquet Jr., is *carried with the case.*

IT IS FURTHER ORDERED that the appellant's motion to strike rule 28 U.S.C. section 711, 28 U.S.C. section 956, F.R.A.P. 27(b), and Fifth Circuit Rule 27 is *Denied.*

[Three sets of initials are subscribed at the bottom.]

By the "tax court"

2008 Jun 2—COLVIN's sua sponte "order" striking parties/capacities

UNITED STATES TAX COURT
Washington, DC 20217

Louto J. Braquet, Jr. and Louto J. Braquet, Jr.	)	
Petitioner,	)	Docket No. 13071-08
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER

For cause, it is

ORDERED that the caption of this case is amended to read, "Louto J. Braquet, Jr. , Petitioner(s) v. Commissioner of Internal Revenue, Respondent."

(Signed) John O. Colvin

Chief Judge

Dated: Washington, D.C.
June 2, 2008

SERVED Jun 02 2008

2008 Jun 2—"FR's" "secret" "unfiling" "order"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DKT. NO(s). 13071-08

The enclosed documents:
"Pollock I" Notice and Conference Call Notice Standards

received 05/29/08 are returned *unfiled* for the following reason(s):

FORM AND STYLE

☒ Caption incomplete or incorrect. Rule 23(a)(1).

Correct caption is: Louto J. Braquet, Jr., Petitioner v. Commissioner . . . .

☐ Docket number incomplete or incorrect.

☐ No signature or no original signature. Rule 23(a)(3).

☒ Insufficient copies. Rule 23(b).

☐ Improper joinder of motions. Rule 54.

STATUS OF REPRESENTATIVE

☐ Representative not admitted to practice. Rule 200.

☐ No entry of appearance filed by representative. Rule 24(a).

☐ Motion to withdraw representative. Failure to comply with Rule 24(c).

☐ Include current address(es) and telephone number(s) of petitioner(s).

☐ Power of attorney not recognized.

CONSOLIDATION

☐ All cases not at issue. Rule 141(a).

☐ Place of trial must be same for all cases.

☐ All docket numbers must appear in caption of document in chronological order beginning with earliest number.

MISCELLANEOUS

☐ Discovery requests/responses are not filed. Rules 71(c) and/or 72(b).

☐ Not timely-motion for leave to file or equivalent needed.

☐ Documents appear to be in the nature of evidence and cannot be kept by the Court at this time.

☒ Not a proper document to be filed with the Court.

☐ Motion to change place of trial required. Rule 140(c).

☐ Tax returns are not filed with the Tax Court.

☐ Decision/Order or Dismissal entered _____

☐ _____

_____ FR

NOTE: All Rule references are to a current copy of the Tax Court Rules of Practice and Procedure. A copy of the Rules may be obtained for $22.00 by writing to the Administrative Office, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, or to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and enclosing a check for the appropriate amount. The Rules are also available on the Tax Court's Internet web site, **www.ustaxcourt.gov**.

Office of the Clerk
Date 06/09/08

2008 Jul 24—COLVIN's TCR 51 motion/"order"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

LOUTO J. BRAQUET, JR.,	)	
Petitioner	)	
v.	)	Docket No. 13071-08.
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER

Upon due consideration of respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, filed July 16, 2008, and for cause, it is

ORDERED that petitioner shall on or before August 22, 2008, file with the Court a written response to respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted. It is further

ORDERED that petitioner may on or before August 22, 2008, file with the Court a proper amended petition which contains clear and concise assignments of each and every error that petitioner alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax in dispute in this case, and clear and concise lettered statements of the facts on which petitioner bases the assignments of error. *See* Rule 34(b), Tax Court Rules of Practice and Procedure; Jarvis v. Commissioner, 78 T.C. 646, 658 (1982) .

(Signed) John O. Colvin

John O. Colvin
Chief Judge

Dated: Washington, D.C.
July 24, 2008

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Default Judgment denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION FOR DEFAULT JUDGMENT

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ More Definite Statement denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION FOR MORE DEFINITE STATEMENT

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and TCR 23(a)(3) M/ Strike All of Comm'r's Documents denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S TCR 23(a)(3) MOTION TO STRIKE ALL OF COMM'R'S DOCUMENTS

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Strike Comm'r's M/ Dismiss denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE
COMM'R'S MOTION TO DISMISS

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Strike TCR 91 denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCR 91

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Strike TCRs 70(a)(2) and 90(a) denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCRs 70(a)(2) and 90(a)

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Strike TCRs 120 and 121 denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCRs 120 and 121

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 11—COLVIN, Defacing, "secret order" striking parties/capacities, and M/ Strike TCR 160 denied

U.S. TAX COURT
FILED
AUG 22 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
Commissioner of Internal	§	
Revenue and	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCR 160

U.S. TAX COURT
DENIED
SEP 11 2008
(Signed) John O. Colvin
JUDGE

2008 Sep 12—COLVIN's "bulldozing" "order" "assigning" (and referring case to) unconsented-to STJ

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

LOUTO J. BRAQUET, JR.,	)	
Petitioner	)	
v.	)	Docket No. 13071-08
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER

On July 16, 2008, respondent filed a Motion To Dismiss for Failure to State a Claim Upon Which Relief Can be Granted. By Order dated July 24, 2008, the Court directed petitioner to file a proper amended petition and an objection, if any, to respondent's motion.

On August 22, 2008, petitioner filed a Declination to Amend and a Response to respondent's motion to dismiss.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Failure to State a Claim Upon Which Relief Can be Granted, filed July 16, 2008, is assigned to Special Trial Judge Robert N. Armen, Jr.

(Signed) John O. Colvin

John O. Colvin
Chief Judge

Dated: Washington, D.C.
September 12, 2008

2008 Sep 29—Sequence marker—Unconsented-to STJ's (ARMEN's) "final" "order"

2008 Oct 7—"FR's" "secret" "unfiling" "order"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DKT. NO(s). 13071-08

The enclosed documents:
Braquet's Reasserted and Standing Objection to Participation by Any Special Trial Judge

received 10/06/08 are returned *unfiled* for the following reason(s):

FORM AND STYLE

☐ Caption incomplete or incorrect. Rule 23(a)(1).

Correct caption is: Louto J. Braquet, Jr., Petitioner v. Commissioner . . . .

☐ Docket number incomplete or incorrect.

☐ No signature or no original signature. Rule 23(a)(3).

☐ Insufficient copies. Rule 23(b).

☐ Improper joinder of motions. Rule 54.

STATUS OF REPRESENTATIVE

☐ Representative not admitted to practice. Rule 200.

☐ No entry of appearance filed by representative. Rule 24(a).

☐ Motion to withdraw representative. Failure to comply with Rule 24(c).

☐ Include current address(es) and telephone number(s) of petitioner(s).

☐ Power of attorney not recognized.

CONSOLIDATION

☐ All cases not at issue. Rule 141(a).

☐ Place of trial must be same for all cases.

☐ All docket numbers must appear in caption of document in chronological order beginning with earliest number.

MISCELLANEOUS

☐ Discovery requests/responses are not filed. Rules 71(c) and/or 72(b).

☐ Not timely-motion for leave to file or equivalent needed.

☐ Documents appear to be in the nature of evidence and cannot be kept by the Court at this time.

☐ Not a proper document to be filed with the Court.

☐ Motion to change place of trial required. Rule 140(c).

☐ Tax returns are not filed with the Tax Court.

☒ Decision/Order of Dismissal entered 09/29/08.

☒ The case is closed.

FR

NOTE: All Rule references are to a current copy of the Tax Court Rules of Practice and Procedure. A copy of the Rules may be obtained for $22.00 by writing to the Administrative Office, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, or to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and enclosing a check for the appropriate amount. The Rules are also available on the Tax Court's Internet web site, **www.ustaxcourt.gov**.

Office of the Clerk
Date 10/07/08

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" M/ Strike STJ's "Order" of 29 Sep 2008

19

U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE THE STJ'S "ORDER" OF 29 SEPTEMBER 2008

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" M/ Strike TCR 182

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U.S. TAX COURT
LODGED
OCT 16 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCR 182

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" M/ Strike TCR 183

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U.S. TAX COURT
L O D G E D

OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE TCR 183

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" M/ Strike irc § 7443A

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U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S MOTION TO STRIKE IRC § 7443A

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" Post-J/ M/ Sanctions – Administrative

23

U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION FOR SANCTIONS–ADMINISTRATIVE

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" Post-J/ M/ Sanctions – Litigation

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U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION FOR SANCTIONS–LITIGATION

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" Post-J/ M/ for Reconsideration of Findings or Opinion

25

U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION FOR RECONSIDERATION OF FINDINGS OR OPINION

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" Post-J/ M/ to Set Aside Default, Dismissal, and Decision

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U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION TO SET ASIDE DEFAULT, DISMISSAL AND DECISION

2008 Oct 16—COLVIN, Defacing, "secret order" striking parties/capacities, and "secret" "order" "LODGING" M/ New Trial

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U.S. TAX COURT
L O D G E D
OCT 1 6 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION TO SET ASIDE DEFAULT, DISMISSAL AND DECISION

2008 Nov 3—COLVIN, Defacing, "secret order" striking parties/capacities, and Post-J/ M/ to Vacate or Revise Decision denied

18 Closed 9-29-08 – ODD

U.S. TAX COURT
FILED
OCT 16 2008

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S POST-JUDGMENT MOTION TO VACATE OR REVISE DECISION

U.S. TAX COURT
DENIED
NOV 3 2008
John O. Colvin
JUDGE

SERVED NOV 3 2008 *GH*

2008 Nov 3—COLVIN, Defacing, "secret order" striking parties/capacities on Notice of Appeal

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U.S. TAX COURT
F I L E D
NOV – 3 2008

[N.B. Filestamp in heading is only partially legible. *LJB*]

United States Tax Court
UNITED STATES TAX COURT

~~Louto J. Braquet, Jr., and~~	§	
LOUTO J. BRAQUET, JR.,	§	
Petitioners,	§	
v.	§	Docket No. 13071-08
~~Commissioner of Internal~~	§	
~~Revenue and~~	§	
COMMISSIONER OF	§	
INTERNAL REVENUE,	§	
Respondents.	§	

BRAQUET'S VERIFIED NOTICE OF APPEAL

SERVED NOV 0 5 2008

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

TCRs

TCR 23(a)(3)

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, and Signature Required:

All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

(3) *Signature:* The original signature, either of the party or the party's counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall be in the name of the corporation or association by one of its active and authorized officers or members, as for example "Mary Doe, Inc.,

by Richard Roe, President". The name, mailing address, and telephone number of the party or the party's counsel, as well as counsel's Tax Court bar number, shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

TCR 34(b)(4)

RULE 34. PETITION

(b) Content of Petition in Deficiency or Liability Actions:

The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. **The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignments of error shall be deemed to be conceded.** [emphasis added]. Each assignment of error shall be separately lettered.

TCR 36(a)

RULE 36. ANSWER

(a) Time To Answer or Move:

The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition.

TCR 40

RULE 40. DEFENSES AND OBJECTIONS MADE BY PLEADING OR MOTION

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) Lack of jurisdiction, and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.

TCR 51

RULE 51. MOTION FOR MORE DEFINITE STATEMENT

(a) General: If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that ***a party*** cannot reasonably be required to frame a responsive pleading, then ***the party*** may move for a more definite statement before interposing a responsive pleading. **The motion shall point out the defects complained of and the details desired.** See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(all emphasis added).

TCR 54

RULE 54. TIMELY FILING AND JOINDER OF MOTIONS

Motions must be made timely, unless the Court shall permit otherwise. Motions shall be separately stated and not joined together, except that motions may be joined in the following instances: (1) Motions under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only if the assessment and the levy are the subject of the same written statement required by Code section 7429(a)(1).

TCR 60 (title only)

RULE 60. PROPER PARTIES; CAPACITY

TCR 61 (title only)

RULE 61. PERMISSIVE JOINDER OF PARTIES

TCR 70(a)(2)

DISCOVERY

RULE 70. GENERAL PROVISIONS

(a) General:

(1) *Methods and Limitations of Discovery:*

(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery shall be completed and any motion to compel such discovery shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar.

TCR 90(a)

ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

(a) Scope and Time of Request:

Requests for admission shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Requests for admission shall be completed and any motion to review under paragraph (e) hereof shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar.

TCR 91

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required:

(1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party

is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1) must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) Form:
Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Rule 23 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately

lettered or numbered. Exhibits attached to a stipulation shall be numbered serially; i.e., 1, 2, 3, etc. The exhibit number shall be followed by "P" if offered by the petitioner, e.g., 1–P; "R" if offered by the respondent, e.g., 2–R; or "J" if joint, e.g., 3–J.

(c) Filing:
Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) Objections:
Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) Binding Effect:
A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party:

(1) *Motion To Compel Stipulation:*

If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall

(A) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation;

(B) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation;

(C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated;

(D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and

(E) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:*

Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) *Failure of Response:*

If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

(4) *Matters Considered:*

Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

TCR 120

RULE 120. JUDGMENT ON THE PLEADINGS

(a) General: After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the

Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

(emphasis added).

TCR 121

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial.

(emphasis added).

TCR 160

RULE 160. HARMLESS ERROR

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a

decision or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of a case will disregard any error or defect which does not affect the substantial rights of the parties.

TCR 182

RULE 182. CASES IN WHICH THE SPECIAL TRIAL JUDGE IS AUTHORIZED TO MAKE THE DECISION

Except as otherwise directed by the Chief Judge, **[N.B. *Ad hoc* rule-making? case-by-case basis?]** the following procedure shall be observed in small tax cases (as defined in Rule 170); in cases where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in declaratory judgment actions; and in lien or levy actions: ...

(b) Cases Involving $50,000 or Less:
Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) Declaratory Judgment and Lien or Levy Actions:
A Special Trial Judge who conducts the trial of a declaratory judgment action or, except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a lien or levy action, or to whom such a case is submitted for decision, shall, as soon after such trial or submission as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge. **[N.B. Neither filed nor served; *but see Ballard v. comm'r*, 544 U.S. 40 (2005).]**

(d) Decision:
The Chief Judge may authorize the Special Trial Judge to make the decision of the Court **[N.B. *But see Gonzalez v. United States*, 128 S. Ct. 1765 (12 May 2008) ("If the parties consent").]** in any small tax case (as defined in Rule 170); in any case where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in any declaratory judgment action; and in any lien or levy action, subject to such conditions and review as the Chief Judge may provide.

[effective date note omitted] (e) Procedure in Event of Assignment to a Judge:
In the event the Chief Judge decides to assign a case (other than a small tax case) to a Judge **[N.B. Cases not assigned to *another* judge are necessarily self-assigned to the chief judge; i.e., there is no such thing as a case *with* an STJ *but without* a judge.]** to prepare a report in accordance with Code section 7460 and to make the decision of the Court.

the proposed findings of fact and opinion previously submitted to the Chief Judge shall be filed **[N.B. Contrast this with TCR 182(c).]** as the Special Trial Judge's recommended findings of fact and conclusions of law. Thereafter, the procedures of Rule 183(b), (c), and (d) shall apply.

(emphasis added).

TCR 183

RULE 183. OTHER CASES [effective date note omitted]

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) Trial and Briefs:
A Special Trial Judge shall conduct the trial of any assigned case. **[N.B. *But see Gonzalez v. United States*, 128 S. Ct. 1765 (12 May 2008) ("If the parties consent").]** After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) Special Trial Judge's Recommendations:
After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall file recommended findings of fact and conclusions of law and a copy of the recommended

findings of fact and conclusions of law shall be served in accordance with Rule 21. **[N.B. Compare and contrast this with TCR 182(c), (e).]**

(c) Objections:
Within 45 days after the service of the recommended findings of fact and conclusions of law, **[N.B. contrast this with TCR 182(c)]** a party may serve and file specific, written objections to the recommended findings of fact and conclusions of law. A party may respond to another party's objections within 30 days after being served with a copy thereof. The above time periods may be extended by the Special Trial Judge. After the time for objections and responses has passed, the Chief Judge shall assign the case to a Judge for preparation of a report in accordance with Code section 7460. **[N.B. Obviously, any case not otherwise assigned is necessarily self-assigned to, retained by, the chief judge.]** Unless a party shall have proposed a particular finding of fact, or unless the party shall have objected to another party's proposed finding of fact, the Judge may refuse to consider the party's objection to the Special Trial Judge's recommended findings of fact and conclusions of law for failure to make such a finding or for inclusion of such finding proposed by the other party, as the case may be.

(d) Action on the Recommendations:
The Judge to whom the case is assigned may adopt the Special Trial Judge's recommended findings of fact and conclusions of law, or may modify or reject them in whole or in part, or may direct the filing of additional briefs, or may receive further evidence, or may direct oral argument, or may recommit the

recommended findings of fact and conclusions of law with instructions. The Judge's action on the Special Trial Judge's recommended findings of fact and conclusions of law shall be reflected in the record by an appropriate order or report. **[N.B. *See Ballard v. comm'r*, 544 U.S. 40 (2005).]** Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

(emphasis added).

irc § 7443A(c)

Section 7443A. Special trial judges

(a) Appointment

The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

(b) Proceedings which may be assigned to special trial judges

The chief judge may assign -

(1) any declaratory judgment proceeding,

(2) any proceeding under section 7463,

(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $50,000,

(4) any proceeding under section 6320 or 6330, and

(5) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

(c) Authority to make court decision

The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), (3), or (4) of subsection (b), subject to such conditions and review as the court may provide.

(emphasis added).

irc § 7458

Section 7458. Hearings

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

irc § 7459(d)

Section 7459. Reports and decisions

(d) Effect of decision dismissing petition

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying

such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

Title 28

§ 711

Section 711. [appellate court] Clerks and employees

(a) Each court of appeals may appoint a clerk who shall be subject to removal by the court.

(b) The clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk shall pay into the Treasury all fees, costs and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

28 U.S.C. § 711.

§ 951

Section 951. Oath of office of clerks and deputies

Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: "I, ___ XXX, having been appointed ___, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

28 U.S.C. § 951.

§ 956

Section 956. [General provisions] Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

28 U.S.C. § 956.

Rules of Appellate Procedure

FED. R. APP. P. 27(b).

(b) ***Disposition of a Motion for a Procedural Order.***
The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, **and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions.** [emphasis added.] A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

5TH CIR. R. 27.

27.1 Clerk May Rule on Certain Motions.

Under FED. R. APP. P. 27(b), the clerk has discretion to act on, in accordance with the standards set forth in the applicable rules, or to refer to the court, the procedural motions listed below. The clerk's action is subject to review by a single judge upon a motion for reconsideration made within the 14 or 45 day period set by FED. R. APP. P. 40.

27.1.1 To extend the time for:
filing answers or replies to pending motions;
paying filing fees;

filing motions to proceed in forma pauperis;
filing petitions for panel rehearing and rehearing en banc, and for reconsideration of single judge orders, for not longer than 14 days, 30 days if the applicant for extension is a prisoner proceeding pro se;
filing briefs as permitted by 5TH CIR. R. 31.4;
filing bills of costs; and
filing applications under the Equal Access to Justice Act.

27.1.2 To rule on motions to file briefs out of time.

27.1.3 To stay further proceedings in appeals.

27.1.4 To correct briefs or pleadings filed in this court at counsel's request.

27.1.5 To stay the issuance of mandates pending certiorari in civil cases only, for no more than 30 days, provided the court has not ordered the mandate issued earlier.

27.1.6 To reinstate appeals dismissed by the clerk.

27.1.7 To enter and issue consent decrees in labor board and other government agency review cases.

27.1.8 To enter CJA Form 20 orders continuing trial court appointment of counsel on appeal for purposes of compensation.

27.1.9 ***To consolidate appeals.*** [bold emphasis added]

27.1.10 To withdraw appearances.

27.1.11 To supplement or correct records.

27.1.12 To incorporate records or briefs on former appeals.

27.1.13 To file reply or supplemental briefs in addition to the single reply brief permitted by FED. R. APP. P. 28(c) prior to submission to the court.

27.1.14 To file an amicus curiae brief under FED. R. APP. P. 29 (see 5TH CIR. R. 29.4).

27.1.15 To enlarge the number of pages of optional contents in record excerpts.

27.1.16 To extend the length limits for:
briefs under FED. R. APP. P. 32(a)(7) and 5TH CIR. R. 32;
petitions for rehearing en banc and panel rehearing under FED. R. APP. P. 35(b)(2), and 40(b);
certificates of appealability and motions for permission to file second or successive habeas corpus applications under 28 U.S.C. §§ 2254 and 2255, under 5TH CIR. R. 22; petitions for permission to appeal under 5TH CIR. R. 5; and
petitions for mandamus and extraordinary writs under 5TH CIR. R. 21.

27.1.17 To proceed in forma pauperis, see FED. R. APP. P. 24 and 28 U.S.C. § 1915.
27.1.18 To appoint counsel or to permit appointed counsel to withdraw.

27.1.19 To obtain transcripts at government expense.

27.2 Single Judge May Rule on Certain Motions. *Pursuant to FED. R. APP. P. 27(c), any single judge of this court has discretion, subject to review by a panel upon a motion for reconsideration made within the 14 or 45 day period set forth in FED. R. APP. P. 40, to take appropriate action on the following procedural motions:*

27.2.1 The motions listed in 5TH CIR. R. 27.1 that have been referred to a single judge for initial action, or for single judge reconsideration of a ruling made by the clerk, but the judge is not limited to the time restrictions in 5TH CIR. R. 27.1.1.

27.2.2 To permit interventions in agency proceedings pursuant to FED. R. APP. P. 15(d).

27.2.3 To act on applications for certificates of appealability under FED. R. APP. P. 22(b) and 28 U.S.C. § 2253 except for death penalty cases where a three judge panel must act.

27.2.4 To extend for good cause the times prescribed by the Federal Rules of Appellate Procedure or by the rules of this court except for enlarging the time for initiating an appeal, see FED. R. APP. P. 26(b).

27.2.5 To substitute parties under FED. R. APP. P. 43.

27.2.6 To exercise the power granted in FED. R. APP. P. 8 and 9, respecting stays, or injunctions, or releases in criminal cases pending appeal, and subject to the restrictions set out in those rules; and

to exercise the power granted in FED. R. APP. P. 18, respecting stays pending review of agency decisions or orders, subject to the restrictions on the power of a single judge contained in that rule.

27.2.7 To stay the issuance of mandates or to recall same pending certiorari.

27.2.8 To expedite appeals.

27.2.9 To strike a nonconforming brief or record excerpts as provided in 5TH CIR. R. 32.5 and to strike other papers not conforming to the FED. R. APP. P. and 5TH CIR. R.

27.3 Emergency Motions.

Counsel ordinarily should file emergency motions or applications with the clerk rather than with an individual judge.

Where time does not permit filing a motion or application by mail or hand delivery, counsel may contact the clerk by telephone and request permission to file by fax;

if fax filing is impractical, then the clerk may, in extraordinary cases, accept and forward to the court a telephone communication;

thereafter, counsel must file the motion in writing with the clerk as promptly as possible (whether or not previously faxed).

The motion, application, or contact must contain a brief account of the prior actions of this or any other court or judge to which the motion or application, or a substantially similar or related petition for relief, has been submitted.

27.4 Form of Motions.

Parties or counsel must comply with the requirements of FED. R. APP. P. 27 including the length limits of FED. R. APP. P. 27(d)(2). Except for purely procedural matters, motions must include a certificate of interested persons as described in 5TH CIR. R. 28.2.1. Where a single judge or the clerk may act only an original and 1 copy need be filed. All motions requiring panel action require an original and 3 copies. ***All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed. [emphasis in original]***

27.5 Motions To Expedite Appeal.

Such motions are presented in the same manner as other motions. Only the court may expedite an appeal and only for good cause.

If an appeal is expedited, the clerk will fix a briefing schedule unless a judge directs a specific date.

Rule 14.1(i)(vi)—Additional Materials

2008 Jun 2—Date comm'r was served

UNITED STATES TAX COURT
400 SECOND STREET, N.W.
WASHINGTON, D.C. 20217

June 02, 2008

NOTIFICATION OF RECEIPT OF PETITION

Docket No.: 13071-08

Name of Case: Louto J. Braquet, Jr.
v. COMMISSIONER OF
INTERNAL REVENUE

On May 29, 2008 the Court received and filed a PETITION in the above case.

Further:
(X) Filing Fee Paid
(X) Request for Place of Trial at Houston, TX
(X) Order that Caption of Case is Amended

Petition served on respondent on June 02, 2008.

All papers and correspondence MUST bear the DOCKET NUMBER given above. **Pursuant to Rule 21(b)(4), you are responsible for informing the Court of any change of address.**

Robert R. Di Trolio

Clerk of the Court

Please note that the Tax Court case information such as name, filings by the parties and actions taken by the Court can be found at the Tax Court website at

www.ustaxcourt.gov. This information is updated Monday through Friday at 6:00 p.m. Eastern Time.

Pro Se:

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